



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor  
Director

Michael D. Overstreet  
Regional Director

## WASTE MANAGEMENT BOARD AND STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO INDEPENDENCE LUMBER, INC.

### SECTION A: Purpose

This is a Consent Order issued by the Virginia Waste Management Board and the Virginia Air Pollution Control Board to Independence Lumber, Inc. This Order is issued by the Boards, through the Director of the Department of Environmental Quality, pursuant to the authority granted to the Waste Board and the Director under Virginia Code §§ 10.1-1402 and 10.1-1185, and the authority granted to the Air Pollution Control Board under Virginia Code §§ 10.1-1301, 1309, 1316 and § 10.1-1184 to resolve certain violations of environmental law and regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" or "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184, and the Virginia Air Pollution Control Board, a collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a consent order.

6. "Company" means Independence Lumber, Inc., a company certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.
7. "Facility" means Independence Lumber, Inc. offices, mill and associated operations, located at 407 Lumber Lane, Independence, Virginia.
8. "SWRO" means the Department's Southwest Regional Office, located in Abingdon, Virginia.

**SECTION C: Findings of Facts and Conclusions of Law**

1. On April 27, 2006, a DEQ Southwest Regional Office staff member was driving by the Company's Facility and noticed smoke coming from the property. DEQ staff entered the property and met with Mr. David Williams, Operations Manager of the Facility. Mr. Williams was operating a bulldozer in the area where a fire was burning and the smoke originating. The area is located northeast of the company offices, east of the milling operations. The area was the location, as observed by a DEQ staff member two days previously, of a large pile of stumps, log and board cutoffs, slabs and pallets. A sink and small amount of sheetrock had also been present.
2. The DEQ staff member on site, investigating the fire, had been to the site two days before, on April 25, 2006, to conduct an inspection of an air facility permitted for stone processing equipment (Registration No. 11484). At that time, the DEQ staff member had informed Company personnel not to burn the pile noted above.
3. At all relevant times, the Director has not issued a permit to the Company to dispose solid waste or to burn solid waste.
4. DEQ's SWRO issued a Notice of Violation to the Company on May 11, 2006, citing the Company for alleged violations of solid waste regulations, in the operation of an unpermitted solid waste facility and improper disposal of solid waste, and of air regulations, in the open burning of commercial/industrial waste.
5. DEQ staff and Company officials met on May 23, 2006 to resolve the apparent violations of the following sections of the Solid Waste Act and/or the Virginia Solid Waste Management Regulations, and of the Virginia Air Pollution Control Regulations:

The Virginia Administrative Code, Solid Waste Management Regulations, state the following:

**9 VAC 20-80-90 Unpermitted facilities. A. Prohibitions and duties.**

1. No person shall operate a sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the director.
2. No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director.
3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

**9 VAC 20-80-90.B.:**

Any person who violates 9 VAC 20-80-90 A shall immediately cease treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, closure in place, or alternative remedial actions as are required by Part IV of this chapter.

The Code of Virginia states the following in support of the Solid Waste Management Regulations listed above:

**§10.1-1408.1. Permit required; open dumps prohibited.**

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the director.

**§10.1-1418.1. Improper disposal of solid waste; civil penalties.**

A. It shall be the duty of all persons to dispose of their solid waste in a legal manner.

The Virginia Administrative Code, Air Pollution Control Board Regulations, state the following:

**9 VAC 5-40-5620(D):**

No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

**SECTION D: Agreement and Order**

Accordingly, the Virginia Waste Management Board and the Air Pollution Control Board, by virtue of the authority granted them in Va. Code §10.1-1455(F) and §10.1-1316(C) respectively, order the Company, and the Company agrees to perform the actions described in Appendix A of this Order. In addition, the Boards order the Company, and the Company voluntarily agrees to pay a civil charge of \$3,600.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order, and shall include the Company's Federal Identification Number.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Boards or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Company declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Waste Management and State Air Pollution Control Laws, and it waives the right to any hearing or other administrative

proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the Company to comply with any of the terms of this Order shall constitute a violation of an Order of the Boards. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Boards or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director and the Director of the SWRO within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify the Director of the Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by the Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of the Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Company to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of the Company.
14. By its signature below, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006

Michael D. Overstreet, Regional Director  
Department of Environmental Quality

Independence Lumber, Inc. voluntarily agrees to the issuance of this Order.

Randall Eller  
Randall Eller  
Owner  
Independence Lumber, Inc.

Date: 31-Jul-06

Commonwealth of Virginia

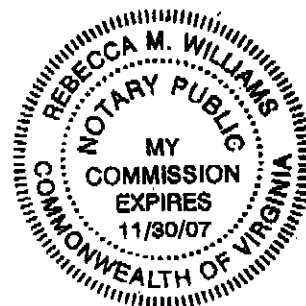
City/County of Grayson

The foregoing document was signed and acknowledged before me this 31<sup>st</sup> day of  
July, 2006 by Randall Eller on behalf of Independence  
Lumber, Inc.

Date: 7-31-06

Rebecca Williams  
Notary Public

My commission expires: 11/30/07



#### APPENDIX A

**In order to comply with the provisions of the Virginia Solid Waste Management Regulations and Law and the Air Pollution Control Law, Independence Lumber, Inc. (Company) agrees to implement the following actions by the dates noted below:**

- 1. The Company may dispose of remaining clean wood products at the site by grinding for mulch within 180 days of the effective date of the Order. The Company shall weigh products so disposed prior to grinding, and provide those weight tickets to the Department within 30 days of completion of grinding. If the grinding schedule can not be met, remaining clean wood products at the site shall be removed to a permitted waste management facility within 180 days of the effective date of the Order. The Company shall provide the Department with disposal receipts within 30 days of completion.**
- 2. The Company shall provide remedial action for the ash remaining at the site of the fire by removal of the ash to a permitted waste management facility within 180 days of the effective date of the Order, and shall provide the Department with disposal receipts within 30 days of completion. This option is provided by 9 VAC 20-80-205.B of the Solid Waste Management Regulations. A followup site inspection will be conducted by DEQ staff to verify removal of material and ash from the site.**
- 3. The Company shall develop and submit to the Department for review and approval a waste management plan within 60 days of the effective date of the Order. This plan shall address proper disposal of each type of waste generated by the Company, with schedules for an ongoing disposal program (schedules for chipping, etc.) for each type of waste.**